

Rhode Island Department of Corrections
POLICY UNIT

TO: See Distribution

VIA: A.T. Wall, II
Director

VIA: E. Evans Alexander, Assistant Director
Administration

FROM: *AF* Ann J. Fortin, Chief/Program Development
Administration

DATE: December 28, 2001

SUBJECT: REVISION TO RIDOC'S DISCRIMINATION CLAUSE

In compliance with revision to Rhode Island General Law (RIGL) § 28-5-7(1)(i), RI's Fair Employment Practices Act, be advised that effective immediately, all RIDOC policies that include the Department's discrimination clause are hereby revised to include "gender identity or expression" as a protected class.

RIGL § 28-5-6(14) Definitions, states that "gender identity or expression includes a person's actual or perceived gender, as well as a person's gender identity, gender-related self image, gender-related appearance, or gender-related expression; whether or not the gender identity, gender-related self image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex at birth."

Revision to the Department's discrimination clause is as follows:

"RIDOC does hereby reaffirm its policy of equal employment opportunity for all qualified applicants and employees without regard to race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, country of ancestral origin, or other status protected by law." (underscore=new)

Future revisions to the following policies will include the updated language:

- 3.03-2 DOC; Equal Employment Opportunity/Affirmative Action; 05/24/99
- 3.05-2 DOC; Sexual Harassment; 01/11/99
- 5.17.01-4 Inmate Pay and Employment Policy – Institutional; 10/01/91
- 3.14-1 DOC; Code of Ethics; 07/01/98

Please insert this directive in policy manuals and bring its contents to the attention of appropriate staff within your units.

From: A.T. Wall II
Re: Revision to RIDOC's Discrimination Clause
12/28/01; Page 2 of 2

Unless otherwise specified, unit/programs/facility managers are responsible for ensuring subordinate staff are adequately trained in the contents of this directive.

Distribution:

Director (original)

Assistant Directors (for distribution to affected personnel, including Wardens)

Food Services Unit

Legal Counsel

Parole Board

Policy Unit


Human Resources

Training Academy

**Rhode Island Department of Corrections
POLICY UNIT**

TO: See Distribution

VIA: A.T. Wall, Assistant Director
Administration

FROM:  Ann J. Fortin, Chief/Program Development
Administration

DATE: May 8, 1998

SUBJECT: 3.14-1 DOC; CODE OF ETHICS AND CONDUCT; 07/01/98

The enclosed policy revision, effective 07/01/98, repeals policy # 3.14 DOC and contains the following changes:

- I. Purpose - "All employees" of the RIDOC is defined as: sworn and civilian, union and non-union, and line, supervising and managerial employees. This policy's purpose is to provide all RIDOC employees with a clear understanding of conduct required of them as RIDOC employees. (The policy formerly spoke of conduct "expected" of employees.)
- II. Policy - All employees must (vs. "are expected to") uphold and abide by U.S. and R.I. laws and all local ordinances and follow the Code of Ethics for R.I. State Employees [RIGL § 36-14-5, included as (new) Attachment 1]. This section also specifies that all employees are expected to carry out with diligence all lawful directives issued by superiors and supervisors.

III. Procedures

A. Statutory Requirements - Cites RIGL § 36-14-5, Code of Ethics for R.I. State Employees.

B. Departmental Mission Statement (revised)

The mission of the RIDOC is to contribute to public safety by maintaining a balanced correctional system of institutional and community programs which provide a range of control and rehabilitation options for criminal offenders.

C. Definition (new)

Personnel in every unit of the Department are subject to this Code. The respective units of this Department supervise various categories of persons -- pre-trial detainees, sentenced inmates (including incarcerated persons and home confinees), probationers, and parolees. For these reasons, this Code will use the

term "offender" to refer to each individual or category within the Department's jurisdictional population.

D. Rules and Regulations

2. Relationship to the Public

a. Conduct Toward the Public

- (2) The prohibition of language which is insulting, degrading, abusive, profane, or refers to an individual's race, religion, ethnicity, national origin, gender, age, handicap, or sexual orientation in a demeaning or derogatory manner now extends to electronic and voice mail and all integrated computer networks.

3. Professional Relationships

b. Nepotism and Favoritism

- (1) Staff are forbidden to take part in the selection or promotion of any member of their households (new), immediate families, or of the immediate families of spouses or children (new).

4. Relationships with Offenders

b. Personal Relationships

- (2) Staff shall make no attempt to influence any outside agency on behalf of any offender by writing letters, testifying, or having any form of contact on behalf of an offender unless approved by the Director, an Assistant Director, or a Warden (new).
- (3) Staff shall not knowingly give or receive compensation, gifts, or favors to or from offenders or from the immediate families, visitors (new), representatives, or business associates of offenders...
- (4) Visitors were also added to paragraph III.D.4.b. (4) which refers to compensation, gifts, and favors to/from former offenders.

5. Reporting Requirements

- a. Safety and Security ... Even if an employee is uncertain about the significance of information received, the employee shall

immediately (new) report it to the administrator of the unit in which the employee works.

6. *Examples of Misconduct Subject to Disciplinary Action*

f. *Harassment*

(2) *Sexual harassment is defined/described as:*

- (a) *Any unwelcome sexual advances or requests for sexual favors or any other verbal or physical conduct of a sexual nature when submission to such conduct or such advances or requests is made either explicitly or implicitly a term or condition of an individual's employment;*
- (b) *An unwelcome sexual advance, request for sexual favors, and/or other verbal or physical conduct of a sexual nature when submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual; or*
- (c) *Conduct so infused with hostility towards members of one sex that it alters the conditions of employment, interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment.*

This definition is consistent with policy 3.05-1 DOC, Sexual Harassment.

h. *Substance Abuse* (new title)

- (1) *The presence or consumption of alcohol on Departmental premises, in Departmental vehicles, or while wearing a uniform which gives the appearance that the staff member is on duty at the Department of Corrections is prohibited, except when it is in an unopened (new) and sealed container in the employee's vehicle.*
- (3) *...However, staff remain accountable for their performance at all times and are still subject (vs. may still be subject) to discipline for violating other sections of this Code.*

i. Misuse of State Property

- (4) Unauthorized posting, alteration, or removal of posted material or material in Departmental files, records (new), and databases (new).
- (5) Removing state property from Departmental premises without the permission of a superior or unless this action is related to (new) the performance of one's duties.

Please ensure obsolete versions of this policy are removed from policy manuals, insert this revision, and bring its contents to the attention of appropriate staff within your units.

Persons responsible for implementing the provisions of this policy are also responsible for ensuring adequate supplies of attachments are available for use by staff.

THIS POLICY IS APPROVED FOR INCLUSION IN THE INMATE LAW LIBRARY.

SPECIAL NOTE: THIS POLICY WILL BE ISSUED IN BOOKLET FORM BY HUMAN RESOURCES IN THE NEAR FUTURE. ALL FACILITY/UNIT MANAGERS ARE RESPONSIBLE FOR ENSURING ALL EMPLOYEES UNDER THEIR SUPERVISION RECEIVE COPIES AS SOON AS POSSIBLE AND FOR PROVIDING WRITTEN DOCUMENTATION TO GEORGE TRUMAN THAT SUCH DISTRIBUTION OCCURRED. MANAGERS NEED NOT LIST ALL EMPLOYEES BY NAME, BUT YOU MUST SIGN A STATEMENT THAT ALL EMPLOYEES UNDER YOUR SUPERVISION DID RECEIVE COPIES AS OF A PARTICULAR DATE.

AJF/gah
Enclosure

Distribution:

Director (original)
Assistant Directors (for distribution to affected personnel, including Wardens)
Food Services Unit
Legal Counsel
Marshal
Parole Board
Policy Unit
Training Academy

cc: E. Evans-Alexander
G. Truman

RHODE ISLAND DEPARTMENT OF CORRECTIONS POLICY AND PROCEDURE



POLICY NUMBER:
3.14-1 DOC

EFFECTIVE DATE:
07/01/98

PAGE 1 OF 13

REPEALS:
3.14 DOC

DIRECTOR:

SECTION:
PERSONNEL

SUBJECT:
CODE OF ETHICS AND CONDUCT

REFERENCES: ACA standard # 3-4067 (written code available to all employees) RIDOC policy #'s 1.02 DOC (Departmental Mission, Philosophy and Goals), 9.30-1 DOC (Use of Force), 3.05-1 DOC (Sexual Harassment), 4.09.03-1 (Departmental Stress Program);

AUTHORITY: Rhode Island General Laws (RIGL) § 42-56-10(v), Powers of the director; RIGL § 36-14-1, Declaration of policy; and RIGL § 36-14-5, Code of Ethics for R.I. State Employees

Inmate/Public Access - Yes

I. PURPOSE:

To provide all employees of the Rhode Island Department of Corrections (RIDOC) -- sworn and civilian, union and non-union, and line, supervisory, and managerial employees -- with a clear understanding of the conduct required of them as employees of the RIDOC.

II. POLICY:

- A. All employees must uphold and abide by the laws of the United States and the State of Rhode Island and all local ordinances. All employees must follow the Code of Ethics for Rhode Island State Employees (RIGL § 36-14-5, Attachment 1) and all Departmental policies, rules, objectives, and orders. Such compliance includes, but is not limited to, adherence to the specific rules and regulations enumerated in this policy. All employees are expected to carry out with diligence all lawful directives issued by superiors and supervisors.
- B. The Director's authority to promulgate and enforce a Code of Ethics and Conduct derives from his powers under RIGL § 42-56-10. Among these powers are the authority to:

1. Establish, maintain, administer, and/or eliminate State correctional facilities as s/he deems necessary;
2. Direct employees in the performance of their official duties;
3. Hire, promote, transfer, assign, and retain employees and suspend, demote, discharge, and/or take other necessary disciplinary action;
4. Maintain the efficiency of the operations of the Department and determine the methods, means, and personnel by which those operations will be conducted;
5. Establish training programs for employees;
6. Investigate grievances and inquire into alleged conduct within the Department;
7. Relieve employees from duties because of lack of work or for other legitimate reasons;
8. Make and enforce rules and regulations necessary to perform his/her duties including but not limited to rules and regulations regarding nutrition, sanitation, safety, discipline, religious services, visiting privileges; and classification, education, training, employment, care and custody for all persons committed to the Department.

III. **PROCEDURES:**

A. **Statutory Requirements**

All staff are to act at all times in conformity with RIGL § 36-14-1 which states, "It is the policy of the State of Rhode Island that public officials and employees must adhere to the highest standards of ethical conduct, respect the public trust and the rights of all persons, be open, accountable, and responsive, avoid the appearance of impropriety, and not use their position for private gain or advantage". In addition, all staff must abide by RIGL § 36-14-5, the Code of Ethics for Rhode Island State Employees (Attachment 1).

B. **Departmental Mission Statement**

"The mission of the Rhode Island Department of Corrections (RIDOC) is to contribute to public safety by maintaining a balanced correctional system of institutional and community programs which provide a range of control and rehabilitation options for criminal offenders."

Consistent with the mission, staff shall not knowingly engage in actions, conduct or associations, either on or off duty, which compromise the authority of the staff member or other staff members, or which give the appearance of improper influence on the staff member's judgment when making decisions affecting the Department, offenders or staff, or which bring discredit on the Department or undermine its goals and objectives in any way. Such action may subject the staff member to disciplinary measures.

- C. Definition: Personnel in every unit of the Department are subject to this Code. The respective units of this Department supervise various categories of persons -- pre-trial detainees, sentenced inmates (including incarcerated persons and home confinees), probationers, and parolees. For these reasons, this Code will use the term "offender" to refer to each individual or category within the Department's jurisdictional population.

D. Rules and Regulations

1. General

a. Appointment

- (1) Statements or representations made in interviews, employment or examination forms found to be false or intentionally misleading may subject the staff member to dismissal from the service of the Department of Corrections.
- (2) All staff must allow an identification photograph to be taken and retaken as necessary to maintain Departmental records.

b. Change of Vital Personal Data

- (1) Staff are responsible for immediately notifying the Office of Human Resources of: a) any change in address and/or telephone number; b) change in marital or family status; or c) other information which may affect eligibility for health care coverage or related benefits.
- (2) Staff are to immediately notify the manager responsible for the work unit of any change in telephone number. Exceptions may be granted in special circumstances with the permission of the Director.

c. Fitness for Duty

- (1) Each employee must be present at his/her designated reporting time, properly groomed and attired, alert, and must be physically and mentally prepared to perform his/her duties throughout the work shift.
- (2) For reasons of safety, security, and mutual protection of employees and the offender population, if at any time or for any reason an employee feels that either s/he or a fellow employee is unprepared to adequately perform the assigned duties, it is the employee's responsibility to inform the proper supervisor and seek relief as soon as possible.
- (3) No additions or modifications to any uniform, the badge, or other identification will be permitted unless authorized by the Director.

d. Identification

- (1) Uniformed staff shall wear their badges and name plates with their last names at all times while on duty. Non-uniformed staff shall wear Department I.D. badges or building passes provided at the Control Centers of secure institutions in a visible manner whenever they are within inmate facilities.
- (2) While on duty, employees shall provide their last names, job titles, and names of immediate supervisors whenever requested by any individual.
- (3) All staff shall strictly adhere to the identification and access procedures established by a facility.
- (4) No civilian staff member, whether on or off duty, is permitted to carry a badge or other identification stating or implying that s/he is employed by the Department of Corrections unless this identification is issued by the Department or approved by the Director.

2. Relationship to the Public

a. Conduct Toward the Public

- (1) Members of the public, including visitors to inmates, visitors to Departmental offices and facilities, and

individuals who call the Department on the telephone, shall be treated with courtesy, dignity, and respect at all times.

- (2) Language which is insulting, degrading, abusive, profane, or refers to an individual's race, religion, ethnicity, national origin, gender, age, handicap or sexual orientation in a demeaning or derogatory manner shall not be used in speaking to or about members of the public. This prohibition shall also apply to communications with or about staff and offenders, and to the use of radio, telecommunications equipment, electronic and voice mail, and all integrated computer networks.
- (3) It is the duty of staff to assist members of the public, and to answer questions promptly, accurately, and courteously. In the event that a staff member cannot easily obtain the information requested, the staff member shall, whenever possible, explain to the individual how to contact the appropriate source of information.

b. Dissemination of Information

- (1) Only the Director or the Director's designee will provide official information to the media regarding staff, the offender population, or Departmental activities and programs. No employee shall make statements to the media which jeopardize the security of Departmental operations.
- (2) Confidential or privileged information (i.e., information the disclosure of which would violate federal or state confidentiality laws, would endanger institutional security, or would constitute an unwarranted invasion of personal privacy) shall never be disclosed to the media, the public, or other agencies.
- (3) Access by other Departmental staff, employees of other agencies or members of the public to records concerning staff or a member of the offender population will only be granted subject to the procedures established by the custodian of those records.
- (4) The executive committees of bargaining units are permitted to speak to the media about legitimate union business or matters which relate to collective bargaining or contract administration.

3. Professional Relationships

a. Nature of Professional Relationships

Relationships among staff, and with the staff of other agencies, shall be characterized by respect, courtesy, patience, and cooperation.

b. Nepotism and Favoritism

- (1) Staff are forbidden to take part in the selection or promotion of any member of their households, immediate families, or of the immediate families of spouses or children.
- (2) The Department discourages romantic relationships on the part of staff with employees with whom they are in a supervisory relationship.
- (3) No favoritism will be shown by any staff member to any subordinate or vendor as a result of a personal relationship.

4. Relationships with Offenders

a. Civil Rights of Offenders

- (1) Staff shall protect the civil and legal rights of each member of the offender population.
- (2) The actions and judgments of staff in the exercise of duties which bring them into contact with the offender population shall not be influenced by personal feelings, attitudes, or prejudices toward an individual or group.
- (3) In dealing with or discussing the offender population, staff are forbidden to make derogatory remarks based on race, ethnicity, national origin, religion, gender, age, physical handicap, or sexual orientation.
- (4) Staff shall be firm, fair, and consistent in their conduct toward the offender population.
- (5) Any use of force against an offender shall be strictly governed by the standards and procedures contained in the Department's policy on the Use of Force. All staff whose work brings them into contact with the offender population

are responsible for knowing thoroughly the provisions of the Use of Force policy.

b. Personal Relationships

- (1) Staff shall not discuss Departmental operations with the offender population or within hearing range of the offender population, nor shall they permit access to Departmental reports, policies, orders, or memoranda, unless such information is necessary in order for the offender to understand what is expected of him/her or is deemed appropriate by the Director or designee for distribution to the offender population.
- (2) Staff shall make no attempt to influence any outside agency on behalf of any offender by writing letters, testifying, or having any form of contact on behalf of an offender unless approved by the Director, an Assistant Director or a Warden.
- (3) Staff shall not knowingly give or receive compensation, gifts, or favors to or from offenders or from the immediate families, visitors, representatives, or business associates of offenders. Staff shall provide the administrators responsible for their work units with written reports documenting any attempt to offer such compensation, gifts, or favors. Staff are forbidden from directing offenders to perform duties or provide services which are not designated by the Department as official work assignments.
- (4) Staff members shall not knowingly give or receive compensation, gifts, or favors to or from former offenders, or from the immediate families, visitors, representatives, or business associates of former offenders, which are in substantial conflict with the proper discharge of their duties and responsibilities as prescribed in the laws of the State of Rhode Island, or which in any way undermine the goals and objectives of this Code of Ethics and Conduct.
- (5) Offenders are permitted in the office areas of staff only in the course of official Departmental business or to complete work assignments, and shall not linger or remain in these areas after the conclusion of this business.
- (6) Staff shall provide the administrators who supervise their work units with written notification of any personal

associations or relationships with any current offenders of the Department with whom the staff members have contact on the job or over whom the staff members have control or decision making authority.

- (7) Staff shall not establish associations or relationships which bring discredit to the Department or which compromise their abilities to perform their jobs.
- (8) Staff are prohibited from dating, marrying, or otherwise developing romantic, physical, or sexual relationships with offenders of the Department with whom the staff members have contact on the job, or over whom the staff members have control or decision making authority.

5. Reporting Requirements

a. Safety and Security

Employees shall immediately report any information received, either on or off duty, which may have an impact on the safety or security of staff, the offender population, or Departmental operations. Even if an employee is uncertain about the significance of information received, the employee shall immediately report it to the administrator of the unit in which the employee works.

b. Violations of Departmental Policy

- (1) Staff have a duty to submit full, accurate, and timely reports to their supervisors concerning any criminal conduct which they observe on duty.

This provision shall not be construed as relieving employees of their obligation to provide any other reports required by Departmental policy.

- (2) If, for any reason, staff fear that providing this information to their supervisors may place them at risk of personal harm, they may report this information directly to the Director or to the Assistant Directors who oversee their respective work units.

c. Contact with Law Enforcement Agencies

Employees are required to provide the administrators in charge of their work units with written notification of arrests by law

enforcement authorities. This notification shall be submitted at the beginning of the next working day after the arrest or, if the employee is on leave for any reason, within ten (10) calendar days.

d. Provision of Information

An employee must provide timely, accurate, and complete information relating to Departmental operations when required by a supervisor or Director's designee.

6. Examples of Misconduct Subject to Disciplinary Action

This section describes specific instances of misconduct which may subject an employee to disciplinary measures, up to and including termination. However, nothing in this section precludes the Department from taking the full range of disciplinary measures against an employee who violates the other sections of this policy.

a. Conduct Unbecoming a Correctional Employee

- (1) Misconduct, on or off duty, which violates federal, state, or local criminal codes.
- (2) Any activity which undermines the work or authority of the staff member or other staff members, brings discredit on the Department, compromises the Department's mission or operations, or adversely affects the public trust.
- (3) Abuse of position for personal gain or benefit.

b. Tardiness, Absenteeism, and Abuse of Sick Leave

- (1) Failure to arrive on time for work.
- (2) Failure to report for work without prior authorization.
- (3) Failure to return from a scheduled break in a timely manner.
- (4) Leaving a post unattended without proper notification or relief.
- (5) Departure from duty without authorization prior to the completion of a shift.
- (6) Abuse of sick leave.

c. Dereliction of Duty

- (1) Sleeping on duty.
- (2) Inattentiveness, including but not limited to reading or writing while on a security post unless the activity is job-related and authorized by a superior; excessive use of the telephone for personal calls; or creating a distraction for other employees which jeopardizes the security or order of Departmental operations.
- (3) Failure to follow policies, procedures, protocols, and post orders.
- (4) Horseplay with members of the offender population or with other staff.
- (5) Carelessness, negligence, or poor performance overall.

d. Insubordination

- (1) Failure or refusal to follow a lawful order or directive from a supervisor or superior.
- (2) Failure to follow general or specific post orders or written orders communicated through the chain of command.
- (3) Abusive behavior toward a supervisor or superior, including but not limited to displaying a disrespectful, insulting, or threatening attitude by use of language, expressions, or gestures.

e. Unauthorized Physical Contact

- (1) Fighting with fellow employees.
- (2) Use of force against a member of the offender population which does not conform to the Department's Use of Force policy.
- (3) Excessive use of force (i.e., more force than is necessary to accomplish a legitimate Departmental objective) in dealing with a member of the public.

f. Harassment

- (1) Language, written communication, or gestures which are intended to ridicule, taunt, embarrass, insult, or provoke a fellow employee, staff member, or member of the offender population, for reasons including, but not limited to, race, ethnicity, national origin, religion, gender, age, handicap, or sexual orientation.
- (2) Sexual harassment is defined/described as:
 - (a) Any unwelcome sexual advances or requests for sexual favors or any other verbal or physical conduct of a sexual nature when submission to such conduct or such advances or requests is made either explicitly or implicitly a term or condition of an individual's employment;
 - (b) An unwelcome sexual advance, request for sexual favors, and/or other verbal or physical conduct of a sexual nature when submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual; or
 - (c) Conduct so infused with hostility towards members of one sex that it alters the conditions of employment, interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

See RIDOC's Sexual Harassment policy for more detailed information.

g. Dishonesty

- (1) Theft.
- (2) Providing false or misleading statements or representations, either verbal or written, on any official forms, reports, logs, affidavits, or other documents.

h. Substance Abuse

- (1) The presence or consumption of alcohol on Departmental premises, in Departmental vehicles or while wearing a uniform which gives the appearance that the staff member is on duty at the Department of Corrections is prohibited,

except when it is in an unopened and sealed container in the employee's vehicle.

- (2) The presence or consumption of controlled substances is prohibited unless they are being taken pursuant to a valid medical prescription. A staff member who works in a secure area or in proximity to the offender population and has in his/her possession prescription medication must take steps to assure that these substances are stored in such a way that they are not accessible to the offender population.
- (3) Staff who are dependent on drugs or alcohol are encouraged to present themselves, in confidence, to the Rhode Island Employee Assistance Program, the Department's Stress Unit or a licensed treatment facility. Employees who voluntarily and without the coercive effect of pending disciplinary action seek such assistance to overcome drug or alcohol dependency are not subject to discipline under section III.D.6.h. However, staff remain accountable for their performance at all times and are still subject to discipline for violating other sections of this Code.

i. Misuse of State Property

- (1) Using state property, either by intention or through negligence, in a manner which causes damage or injury, or unnecessarily diminishes its value.
- (2) Making use of Departmental letterhead, official stamps, postage, photocopying machines, materials, equipment, supplies, or other property for personal reasons.
- (3) Lending, borrowing, selling, or duplicating state property, including but not limited to security items, without the permission of the administrator responsible for the work unit.
- (4) Unauthorized posting, alteration, or removal of posted material or material in Departmental files, records and databases.
- (5) Removing state property from Departmental premises without the permission of a superior or unless this action is related to the performance of one's duties.

j. Conveying Contraband

- (1) Conveying or allowing to be conveyed any unauthorized items, food, substances, or materials to or from offenders.
- (2) Conveying or allowing to be conveyed any authorized items, food, substances, or materials to or from offenders in a manner other than that permitted by Departmental policy, directives, or post orders.
- (3) Staff shall be required to permit inspection by superiors or other staff designated by the Director of packages, envelopes, briefcases, or other containers which are being taken into or out of secured facilities.

k. Misuse of Weapon

The unauthorized possession of weapons as well as the improper use or storage of authorized weapons.

l. Criminal Conviction

Finding of guilt or plea of nolo contendere to a criminal charge.

36-14-5

PUBLIC OFFICERS AND EMPLOYEES

338

History of Section.
P.L. 1987, ch. 195, § 3.

Reenactments. The 1997 Reenactment (P.L. 1997, ch. 326, § 1) redesignated the subdivisions.

NOTES TO DECISIONS

ANALYSIS

1. Agency member.
2. Law enforcement officers.

1. Agency Member.

When a member of a state agency becomes aware that business in which such member has a financial interest will come before the agency, the appropriate response of such member is to recuse himself or herself from participation in such business or voting thereon. *Mehrtens v. Davis*, 674 A.2d 1236 (R.I. 1990).

2. Law Enforcement Officers.

The issue of whether a particular application of §§ 28-9.2-3 and 28-9.2-5 violates a constitutional imperative or a provision of the Ethics Code, this chapter, must be evaluated with the same factors used in analyzing violations of the directive of R.I. Const., art. III, § 7 that public officials and employees avoid the appearance of impropriety. *Town of Lincoln v. Lincoln Lodge No. 22*, 660 A.2d 710 (R.I. 1995).

36-14-5. Prohibited activities. — (a) No person subject to this code of ethics shall have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction, or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her duties or employment in the public interest and of his or her responsibilities as prescribed in the laws of this state, as defined in § 36-14-7.

(b) No person subject to this code of ethics shall accept other employment which will either impair his or her independence of judgment as to his or her official duties or employment or require him or her, or induce him or her, to disclose confidential information acquired by him or her in the course of and by reason of his or her official duties.

(c) No person subject to this code of ethics shall willfully and knowingly disclose, for pecuniary gain, to any other person, confidential information acquired by him or her in the course of and by reason of his or her official duties or employment or use any information for the purpose of pecuniary gain.

(d) No person subject to this code of ethics shall use in any way his or her public office or confidential information received through his or her holding any public office to obtain financial gain, other than that provided by law, for him or herself or any person within his or her family, any business associate, or any business by which the person is employed or which the person represents.

(e) No person subject to this code of ethics shall:

(1) Represent him or herself before any state or municipal agency of which he or she is a member or by which he or she is employed. In cases of hardship, the ethics commission may permit such representation upon application by the official provided that he or she shall first:

(i) Advise the state or municipal agency in writing of the existence and the nature of his or her interest in the matter at issue;

(ii) Recuse him or herself from voting on or otherwise participating in the agency's consideration and disposition of the matter at issue; and

(iii) Follow any other recommendations the ethics commission may make to avoid any appearance of impropriety in the matter.

(2) Represent any other person before any state or municipal agency of which he or she is a member or by which he or she is employed.

(3) Act as an expert witness before any state or municipal agency of which he or she is a member or by which he or she is employed with respect to any matter the agency's disposition of which will or can reasonably be expected to directly result in an economic benefit or detriment to him or herself, or any person within his or her family, or any business associate of the person, or any business by which that person is employed or which the person represents.

(4) Shall engage in any of the activities prohibited by subsection (e)(1), (e)(2), or (e)(3) of this section for a period of one year after he or she has officially severed his or her position with said state or municipal agency; provided, however, that this prohibition shall not pertain to a matter of public record in a court of law.

(f) No business associate of any person subject to this code of ethics shall represent him or herself or any other person, or act as an expert witness before the state or municipal agency of which the person is a member or by which the person is employed unless:

(1) He or she shall first advise the state or municipal agency of the nature of his or her business relationship with the person subject to this code of ethics; and

(2) The person subject to this code of ethics shall recuse him or herself from voting on or otherwise participating in the agency's consideration and disposition of the matter at issue.

(g) No person subject to this code of ethics, or spouse (if not estranged), dependent child, or business associate of the person, or any business by which the person is employed or which the person represents, shall solicit or accept any gift, loan, political contribution, reward, or promise of future employment based on any understanding that the vote, official action, or judgment of the person would be influenced thereby.

(h) No person subject to this code of ethics, or any person within his or her family or business associate of the person, or any business entity in which the person or any person within his or her family or business associate of the person has a ten percent (10%) or greater equity interest or five thousand dollars (\$5,000) or greater cash value interest, shall enter into any contract with any state or municipal agency unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded: provided, however, that contracts for professional services which have been customarily awarded without competitive bidding shall not be

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subject to competitive bidding if awarded through a process of public notice and disclosure of financial details.

(i) No person shall give or offer to any person covered by this code of ethics, or to any candidate for public office, or to any person within his or her family or business associate of any person, or to any business by which the person is employed or which the person represents, any gift, loan, political contribution, reward, or promise of future employment based on any understanding or expectation that the vote, official action, or judgment of the person would be influenced thereby.

(j) No person shall use for any commercial purpose information copied from any statements required by this chapter or from lists compiled from the statements.

(k) No person shall knowingly and willfully make a false or frivolous complaint under this chapter.

(l) No candidate for public office, or any person within his or her family, business associate of the candidate, or any business by which the candidate is employed or which the candidate represents, shall solicit or accept any gift, loan, political contribution, reward, or promise of future employment based on any understanding that the vote, official action, or judgment of the candidate would be influenced thereby.

(m) No person subject to this code of ethics shall, either directly or indirectly, through any government agency, or through a business associate, or through any other person, threaten or intimidate any complainant or witness or any family member of any complainant or witness in any proceeding before the state ethics commission.

(1) In addition to any rights a complainant or witness may have under the Rhode Island Whistleblowers' Protection Act, chapter 50 of title 28 or under any other statute, a complainant or witness may bring a civil action in superior court for appropriate injunctive relief, or actual damages, or both and attorney's fees within three (3) years after the occurrence of the alleged violation of subsection (m) above.

(2) The initiation of litigation by a complainant or witness pursuant to subsection (m)(1) shall not constitute a violation of any confidentiality provisions of this chapter.

(n)(1) No state elected official, while holding state office and for a period of one year after leaving state office, shall seek or accept employment with any other state agency, as defined in § 36-14-2(4)(a), other than employment which was held at the time of the official's election or at the time of enactment of this subsection, except as provided herein.

(2) Nothing contained herein shall prohibit any general officer or the general assembly from appointing any state elected official to a senior policy-making, discretionary, or confidential position on the general officer's or the general assembly's staff, and in the case of the governor, to a position as a department director; nor shall the provisions herein prohibit any state elected official from seeking or

accepting a senior policy-making, discretionary, or confidential position on any general officer's or the general assembly's staff, or from seeking or accepting appointment as a department director by the governor.

(3) Nothing contained herein shall prohibit a state elected official from seeking or being elected for any other constitutional office.

(4) Nothing contained herein shall prohibit the Rhode Island ethics commission from authorizing exceptions to this subsection where such exemption would not create an appearance of impropriety.

(o)(1) No person holding a senior policy-making, discretionary, or confidential position on the staff of any state elected official or the general assembly shall seek or accept any other employment by any state agency as defined in § 36-14-2(4)(a), while serving as such policy-making, discretionary, or confidential staff member and for a period of one year after leaving that state employment as a member of the state elected official's or the general assembly's senior policy-making, discretionary, or confidential staff.

(2) Notwithstanding the foregoing, a person holding a senior policy-making, discretionary, or confidential staff position who has a minimum of five (5) years of uninterrupted state service shall be exempt from the provisions of this section. "State service" as used herein means service in the classified, unclassified and nonclassified services of the state, but shall not include service in any state elective office.

(3) Nothing contained herein shall prohibit any general officer or the general assembly from appointing any such senior policy-making, discretionary, or confidential member of the staff of any state elected official or the general assembly to any other senior policymaking, discretionary, or confidential position on any general officer's or the general assembly's staff, and in the case of the governor, to a position as a department director; nor shall the provisions hereof prohibit any senior policy-making, discretionary, or confidential member of the staff of any state elected official or the general assembly from seeking or accepting any other senior policy-making, discretionary, or confidential position on any general officer's or the general assembly's staff, or from seeking or accepting appointment as a department director by the governor.

(4) Nothing contained herein shall prohibit a person holding a senior policy-making, discretionary, or confidential staff position from seeking or being elected for any constitutional office.

(5) Nothing contained herein shall prohibit the Rhode Island ethics commission from authorizing exceptions to this subsection where such exemption would not create an appearance of impropriety.

History of Section.

§ 1, P.L. 1991, ch. 191, § 1; P.L. 1992, ch. 132,
P.L. 1987, ch. 195, § 3; P.L. 1990, ch. 159, § 1; 1992, ch. 396, § 1; 1992, ch. 436, § 1.

